



**THE ATTORNEY GENERAL  
OF TEXAS**

AUSTIN 11, TEXAS

PRICE DANIEL  
ATTORNEY GENERAL

December 30, 1947

Hon. John M. Steele  
County Attorney  
Lubbock County  
Lubbock, Texas

Opinion No. V-468

Re: The legality of search-  
ing an automobile for  
liquor without a search  
warrant upon probable  
cause.

Dear Sir:

Reference is made to your request for an opinion on the above-captioned subject. You have indicated in your request that you view the decisions on the subject as being in conflict. It is our opinion that the present pertinent statute and the decisions thereon are reconcilable.

You have indicated the cases of *Weeks v. State*, 106 S. W. (2d) 275 and *Waltrip v. State*, 114 S. W. (2d) 555 as being authority for precluding search of an automobile for liquor without a search warrant upon probable cause, and as being irreconcilable with the holding in *Bullock v. State*, 16 S. W. (2d) 1077.

The *Bullock Case* cited by you was decided in 1929 under prohibition when the offense was a felony, and a penitentiary sentence was assessed therein; so clearly there was authority to arrest and search without a warrant at that time.

In both the *Weeks Case* and the *Waltrip Case* the objection of the Court was to the arrest of the defendant without a warrant, preceding or accompanying the search of the automobile and the seizure of the liquor, which vitiated the search of the automobile and precluded the introduction of evidence seized thereunder.

We quote the significant language in *Waltrip v. State*, supra, which parallels the holding in *Weeks v. State*, supra, as follows:

"Therefore, we must hold that the arrest of appellant was without authority, and, this being the case, a subsequent search of appellants automobile was likewise without authority.

Weeks vs. State, 132 Tex. Cr. R. 524, 106 S.W. (2d) 275."

In discussing the problem with particular reference to the cases you have cited, the Court of Criminal Appeals in Cothren v. State, 136 Tex. Cr. R. 463, 126 S. W. (2d) 32, held as follows:

"Appellant cites Moss v. State, Tex. Cr. App., 117 S. W. 2d 428, and Weeks v. State, 132 Tex. Cr. R. 524, 106 S. W. 2d 275, to support his position that the arrest was illegal. Weeks' case was decided in May, 1937, and Moss' case in 1938 on a transaction which occurred in March, 1937. At the time the offense in each of the cases mentioned occurred the Legislature had not authorized arrests without warrant for the offense here charged, hence the holding that the arrests in the foregoing cases were illegal. By Act of the 45th Legislature, page 1089, Sec. 30, Art. 1, Ch. 467, Acts of 2d C. S., 44th Legislature, was so amended as to authorize an arrest for the offense here charged without a warrant. The amended statute became operative on September 1, 1937, and was effective when the arrest here was made on April 12, 1938. The amended law is carried forward in Vernon's Tex. P. C. Vol. 1, as Art. 666-30. For opinion making application of the present statute see Eproson v. State, Tex. Cr. App., 120 S. W. 2d 1073. The arrest of appellant being legal the search of his car was authorized. Linthicum v. State, 134 Tex. Cr. R. 608, 116 S. W. 2d 714 and many authorities therein cited. The amended statute just referred to also authorizes the search and seizure 'without warrant' of all contraband liquor. Under the two provisions pointed out it occurs to us that officers now have the same right to search a vehicle upon probable cause as under the former state-wide prohibition law, that is, where the searching officer prior to the search has knowledge or information of the facts constituting probable cause. The subject will be found treated in 38 Tex. Jur., Secs. 60-68, p. 85 etc. with many

cases annotated in the footnotes which illustrate our holding upon the phrases arising under varying facts."

Of similar import see the decision of the Court of Criminal Appeals in *Moss v. State*, 136 Tex. Cr. R. 36, 123 S. W. (2d) 355, (not to be confused with the case reported in 117 S. W. (2d) 428) holding Art. 666-44 V.P.C., as it now reads, authorizes arrest without a warrant in cases of search of an automobile for liquor.

Since the foregoing expressions of the Court of Criminal Appeals, the Court has repeatedly upheld the search of an automobile without a search warrant for liquor upon probable cause, as it had theretofore done upon many occasions. *Burns v. State*, 141 Tex. Cr. R. 557, 150 S. W. (2d) 38; *Crawford v. State*, 145 Tex. Cr. R. 497, 169 S. W. (2d) 719; *Long v. State*, \_\_\_\_\_ Tex. Cr. R. \_\_\_\_\_, 196 S. W. (2d) 635. In none of the foregoing cases was the question of arrest without a warrant raised as vitiating an accompanying or preceding search of an automobile for liquor, the only question being the introduction of evidence seized as the result of the search of the automobile.

It is our opinion that Article 666-44, V. P. C., as amended by Acts 1937, 45th Leg., p. 1053, ch. 448, is determinative of the problem of the search of an automobile for liquor without a search warrant upon probable cause. We reach this conclusion since, under the foregoing cases, there is no question of arrest without a warrant vitiating such search accompanying, preceding or subsequent to the arrest. We quote the pertinent portion of Art. 666-44, V. P. C.

"It is further provided that if any wagon, buggy, automobile, water or aircraft, or any other vehicle is used for the transportation of any illicit beverage or any equipment designed to be used for illegal manufacturing of illicit beverages, or any material of any kind which is to be used in the manufacturing of illicit beverages, such vehicle together with all such beverages, equipment or material shall be seized without warrant by any representative of the Board or any peace officer who shall arrest any person in charge thereof."

SUMMARY

An automobile may be searched without a search warrant for liquor upon probable cause by any representative of the State Liquor Control Board or any peace officer. Article 666-44, V. P. C.; Moss v. State 136 Tex. Cr. R. 36; 123 S. W. (2d) 355; Burns v. State, 141 Tex. Cr. R. 557, 150 S. W. (2d) 38; Crawford v. State 145 Tex. Cr. R. 497, 169 S. W. (2d) 719; Long v. State, \_\_\_\_\_ Tex. Cr. R. \_\_\_\_\_, 196 S. W. (2d) 635; 38 Tex. Jur. Sec. 60, page 85.

Yours very truly

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By

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